STATE OF MICHIGAN

COURT OF APPEALS

RALPH G. SACHS,

Plaintiff/Counter-defendant-Appellant,

v

CITY OF DETROIT,

Defendant/Counter-plaintiff-Appellee,

and

AMRU MEAH,

Defendant-Appellee.

UNPUBLISHED
February 19, 2009

No. 280859
Wayne Circuit Court
LC No. 07-708748-CH

Before: Fort Hood, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting judgment in favor of defendants. We affirm.

Property located at 5000-5010 West Warren in the City of Detroit was ordered to be demolished on October 21, 1994. Plaintiff purchased the property on February 4, 1998. On January 9, 2006, defendant Meah, the director of the Buildings and Safety Engineering Department for defendant city, sent a letter to the city council indicating that the building was ordered removed on August 7, 2001, and a copy of the letter was sent by certified mail to plaintiff. The letter concluded that the building presented an actual and immediate danger to the health, safety, and welfare of the public, and therefore, emergency measures would be taken to demolish the building with the costs assessed against the property.

On January 23, 2006, plaintiff's counsel sent a letter to the city council questioning whether the property had ever been inspected because it was not in a dilapidated condition. On January 25, 2006, plaintiff filed an application to defer any demolition. On January 31, 2006, defendant Meah advised by letter that a special inspection had occurred on January 27, 2006, and the building was "secured." In light of the proposal to rehabilitate and rent the property, it was recommended that the order of demolition be deferred for three months subject to conditions.

However, this letter of deferral also provided that: "If the building becomes open to trespass or if conditions of the deferral are not maintained, we may proceed with demolition without further hearings." On May 4, 2006, defendant Meah sent a letter to the city council indicating that the property was inspected on May 4, 2006, and the property was open to trespass contrary to the conditions of deferral. Therefore, the property was ordered demolished with the cost of the demolition assessed against the property. Plaintiff alleged that the property was demolished on May 8, 2006, but he did not receive the letter until May 9, 2006.

Plaintiff filed a complaint arising from the demolition of the property, raising claims of inverse condemnation, trespass-nuisance, wrongful demolition, intentional trespass, gross negligence, tortious interference with property interest and business expectancy, and "intentional tort." Defendants moved for summary disposition of the complaint, alleging that plaintiff had a history of purchasing properties in the city for a "pittance," failed to repair or rehabilitate the properties, and filed suit against the city when the properties were demolished. It was asserted that the city's ordinance enforcement was a proper exercise of police power, and plaintiff failed to properly challenge the 1994 demolition order or file a claim of appeal from the decision. Defendants further asserted that governmental immunity precluded the tort claims. In opposition, plaintiff alleged that the demolition was improper where the original order of demolition did not comply with due process. The trial court granted the motion by stating, "In this case, the City Council approved the demolition back in [1994]. They have the right to demolish it. The building was in poor condition." The trial court also granted summary disposition of defendant's countercomplaint requesting the costs of the demolition. In the order disposing of the case, it provided that the judgment amount of $15,600 would be "a lien against the property" until the judgment was satisfied. Plaintiff appeals as of right.

Summary disposition decisions are reviewed de novo on appeal. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id*. The nonmoving party may not rely on mere allegations or denials in the pleadings. *Id*. Affidavits, depositions, and documentary evidence offered in support of, and in opposition to, a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999).

Plaintiff first alleges that the 1994 demolition order did not comply with state law or local ordinance and deprived him of due process of law. However, plaintiff had the burden of demonstrating a genuine issue of disputed fact existed for trial. *Quinto, supra*. Plaintiff was not the record owner of the property at the time of the initial order of demolition. In fact, after plaintiff became record owner of the property and was advised that the property would be demolished, he did not challenge the original order, seek appellate relief, or seek an injunction to prevent any demolition. Rather, plaintiff merely applied for a deferment from the demolition. Although the deferment was granted, it was subject to conditions and expressly provided that if the property was subject to trespass or did not meet the conditions imposed, it was subject to demolition without notice. Defendants have enforcement authority to take measures to correct dangerous buildings within the jurisdiction and order demolition if the owner fails to comply. MCL 125.523 *et seq*. Moreover, when a party has a right to appeal a decision regarding property

rights, challenges premised on due process, takings, and nuisance do not establish separate causes of action. *Krohn v Saginaw*, 175 Mich App 193, 197-198; 437 NW2d 260 (1988). Rather, those issues are to be raised in the appeal. *Id*. at 198. Consequently, plaintiff's challenge to the dismissal of the wrongful demolition and the trespass-nuisance claims are without merit.

Plaintiff next alleges that the trial court erred in dismissing the inverse condemnation claim. However, MCL 125.534(5) expressly authorizes the removal of any unsafe structure. Furthermore, there is no indication that defendants' actions were designed to take "private property for public use without commencement of condemnation proceedings." *Attorney Gen v Ankersen*, 148 Mich App 524, 561; 385 NW2d 658 (1986). The trial court did not err in dismissing this claim.

Plaintiff further asserts that the trial court improperly failed to address the issue of individual liability by defendant Meah. However, review of the answer to the defense motion for summary disposition reveals that plaintiff failed to respond to the governmental immunity argument raised by defendants. Rather, plaintiff's response concluded, without citation to authority, that defendant Meah could be grossly negligent by ordering the demolition. The failure to properly address an issue constitutes abandonment of the issue. See *Newton v Bank West*, 262 Mich App 434, 437 n 2; 686 NW2d 491 (2004). A party may not harbor error as an appellate parachute. *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005). In light of plaintiff's cursory treatment of the issue without citation to authority, the trial court's dismissal was proper.

Lastly, plaintiff alleges that the trial court was not authorized to enter judgment against plaintiff on defendants' counterclaim where the local ordinance provided for a lien against the property, not a personal judgment against a party. However, review of the written language of the order reveals that the trial court expressly provided that the judgment amount for the cost of demolition constituted a "lien" against the property. This is the remedy provided by law. MCL 125.541; MCL 125.541a.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello